

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ERIN CHRISTON, an individual,

CASE NO. 3:19-cv-06214-RJB-JCR

Plaintiff,

V.

## OCEAN BEACH SCHOOL DISTRICT,

ORDER RE PLAINTIFF'S MOTION  
TO DISMISS AND STRIKE  
DEFENDANT'S COUNTERCLAIM  
FOR FAILURE TO STATE A  
CLAIM UNDER FRCP 12(B)(6)

THIS MATTER comes before the Court on Plaintiff's Motion to Dismiss and Strike Defendant's Counterclaim for Failure to State a Claim Under FRCP 12(B)(6). Dkt. 16. The Court has considered the pleadings filed regarding the motion and the remaining file herein. For the reasons set forth below, the motion should be renoted for consideration on June 12, 2020, and the parties should be granted leave to file additional briefing only as to the applicability of the instant motion to Defendant's forthcoming answer and counterclaim, if any.

## I. FACTUAL BACKGROUND

Plaintiff filed her Complaint for Damages in this Court on December 18, 2019, alleging Defendant Ocean Beach School District subjected her to a hostile work environment, based on

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1 her gender, failure to conform to gender stereotypes (due to her sexual orientation), and retaliated  
2 against her for engaging in protected activity, including terminating her employment in violation  
3 of Title VII of the Civil Rights Act of 1964, as amended. Dkt. 1. On March 12, 2020, Plaintiff  
4 filed an Amended Complaint for Damages adding state law claims, including sexual orientation  
5 discrimination and retaliation under the Washington Law Against Discrimination. Dkt. 12.

6 Defendant filed an Answer to Plaintiff's Amended Complaint on March 26, 2020. Dkt.  
7 15. Defendant's Answer includes a counterclaim for malicious prosecution under RCW  
8 4.24.350, at issue here. Dkt. 15, at 8.

9 Defendant's counterclaim is as follows:

10 62. By way of counterclaim, Defendant alleges as follows:

11 63. Plaintiff has initiated this action with knowledge that the same  
12 was false, unfounded, malicious, and without probable or  
reasonable cause in the filing of such action.

13 64. In addition, and alternatively, Plaintiff has initiated this action  
14 with knowledge that the same was filed as a part of a conspiracy to  
misuse judicial process by filing an action known to be false and  
unfounded.

15 65. This action is frivolous and was advanced without reasonable  
16 cause.

17 66. This action has damaged the District and will continue to  
damage the District causing both compensatory and general  
18 damage to the District.

19 67. Plaintiff's filing this action was malicious, oppressive, and/or  
20 in reckless disregard of the District's rights. The District is entitled  
to punitive damages on this counter claim.

21 68. Plaintiff's actions have violated RCW 4.24.350, and therefore  
22 Defendant is entitled to attorneys' fees and costs in accordance  
with RCW 4.84.185.

23 Dkt. 15, at 8.

1 On April 16, 2020, Plaintiff filed the instant motion to dismiss and strike the  
 2 counterclaim. Dkt. 16. Plaintiff's motion argues that "Defendant does not state a single fact in  
 3 support of this claim. The counterclaim merely recites the elements of a 'malicious prosecution'  
 4 cause of action and utterly fails to meet the pleading standards stated in *Ashcroft v. Iqbal*, 556,  
 5 U.S. 662, 677–78 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)." Dkt.  
 6 16, at 1. Plaintiff further argues that there is no basis for the counterclaim's request for punitive  
 7 damages. Dkt. 16, 2 (citing *Bini v. City of Vancouver*, 218 F. Supp. 3d 1196, 1205 (W.D. Wash.  
 8 2016) ("punitive damages are not permitted under Washington law unless expressly authorized  
 9 by statute")).

10 On May 6, 2020, two days before the instant motion to dismiss was ripe for consideration  
 11 (May 8, 2020), the Court entered an order granting Plaintiff leave to file a second amended  
 12 complaint. Dkt. 23. On May 8, 2020, Plaintiff filed a Second Amended Complaint. Dkt. 26.

13 On May 4, 2020, Defendant filed a response in opposition to the instant motion to  
 14 dismiss. Dkt. 21. The response provides, in part, that the counterclaim complies with controlling  
 15 pleading requirements and, "[u]nless the Court orders otherwise, the District intends to file an  
 16 amended answer to the new amended complaint and in doing so intends to drop the punitive  
 17 damages claim in the Counterclaim." Dkt. 21, at 2. Defendant indicates that, because the Court  
 18 granted Plaintiff's Motion to Amend the Complaint, the instant motion is moot. Dkt. 21, at 5.

19 Plaintiff filed a response in support of the instant motion to dismiss. Dkt. 25. Plaintiff  
 20 argues, in part, that Defendant "still has not offered a single fact it intends to re-plead to support  
 21 its claims that Ms. Christon engaged in a 'conspiracy to misuse the judicial process' or that her  
 22 Complaint for Damages lacked 'probable or reasonable cause.'" Dkt. 25, at 1.

## II. DISCUSSION

## **PLAINTIFF'S MOTION TO DISMISS SHOULD BE RENOTED**

A district court has broad discretion to stay proceedings as an incident to its power to control its own docket. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)).

Renoting Plaintiff's Motion to Dismiss until the pleadings are settled will best preserve the parties' and the Court's resources. Defendant has already indicated that it plans to remove the "mistaken prayer for punitive damages" from its forthcoming answer and counterclaim. Dkt. 21, at 1. The Court should not speculate as to what may or may not be amended, removed, or added to the counterclaim, if any, in Defendant's forthcoming answer to the Second Amended Complaint.

Fed. R. Civ. P. 12(a)(1)(A)(i) provides that a defendant must generally file an answer to a complaint within 21 days of service; the Court thus expects that Defendant will file an answer to the Second Amended Complaint no later than May 29, 2020. Therefore, as detailed in the order below, the instant motion should be renoted for consideration on June 12, 2020, and the parties should be granted leave to file additional briefing only as to the applicability of the instant motion to Defendant's forthcoming answer and counterclaim, if any.

### III. ORDER

Therefore, it is hereby **ORDERED** that:

- Plaintiff's Motion to Dismiss and Strike Defendant's Counterclaim for Failure to State a Claim Under FRCP 12(B)(6) (Dkt. 16) is **RENOTED** for consideration on **June 12, 2020**;

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- 1       • Defendant is granted leave to file additional briefing, of 12 pages or less, only as
- 2                to the applicability of the instant motion to the forthcoming answer and
- 3                counterclaim, if any, due no later than **June 5, 2020**; and
- 4       • Plaintiff is granted leave to file additional briefing, of 12 pages or less, only as to
- 5                the applicability of the instant motion to the forthcoming answer and
- 6                counterclaim, if any, due no later than **June 12, 2020**.

7               The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
8               to any party appearing *pro se* at said party's last known address.

9               Dated this 18<sup>th</sup> day of May, 2020.



10               ROBERT J. BRYAN  
11               United States District Judge  
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